

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

JAMES KERR,

Plaintiff,

v.

BOROUGH OF PETERSBURG, *et al.*,

Defendants.

Case No. 1:23-cv-00008-SLG

ORDER RE TWO PENDING MOTIONS

Before the Court are four pending motions:

At Docket 24 is Plaintiff James Kerr's Motion to Compel Production of Documents or, Alternatively, for In Camera Review. And at Docket 27 is Defendants' Motion to Compel Plaintiff to Provide Complete Discovery Responses.

At Docket 33 is Defendants' Motion to Compel Plaintiff's Continued Deposition. Plaintiff responded in opposition to the motion at Docket 41 to which Defendants replied at Docket 42.

At Docket 38 Plaintiff's Motion for Extension of Time Pursuant to FRCP 56(d). Defendants responded in opposition to the motion at Docket 43.

This order addresses the motions at Docket 33 and Docket 38. A separate order shall issue regarding the other two discovery motions.

As to the motion at Docket 33, the Court finds good cause to accord to Defendants additional time to depose Mr. Kerr for up to three hours and 14 minutes. The Court finds that Mr. Kerr willfully impeded and frustrated the

deposition as a result of his spending inordinate amounts of time reading documents with which he was closely familiar and related to this litigation during the deposition itself. The Court reaches its determination as to the length of the additional time that is warranted as follows:

Defendants were entitled to a total of 7 hours for this deponent.

Defendants asked to start the deposition an hour late and agreed to end the deposition by 5 p.m., thus agreeing to only a six hour deposition at most.

Defendants do not dispute Plaintiff's counsel's assertion that Defendants started the deposition 18 minutes late and returned from the lunch break 12 minutes late.

Thus, a maximum of 5.5 hours is fairly allocatable to Defendants for the length of the deposition. Of this, it appears that the parties were on record a total of two hours and 16 minutes.¹ Further, the deposition record reflects that Plaintiff took 17 minutes to review the 16-page operative complaint while on record at the deposition, along with five minutes to review the timeline he had drafted, and two minutes to review a short email. These times are excessive to review relatively short documents with which Plaintiff was already closely familiarity; Plaintiff's conduct wasted everyone's time. This waste of time while on record further warrants the additional relief Defendants seek for the deposition continuation: an

¹ Docket 33-1 at 8.

order that Mr. Kerr “cease his evasive or obstructive conduct, and that any time spent off the record reviewing documents not be counted against Defendants.”²

Based on the foregoing, there remain three hours and 14 minutes for the continuation of the deposition. The Court also finds that Defendants are entitled to recover their reasonable expenses incurred in filing this motion, including attorney’s fees, pursuant to Fed. R. Civ. P. 30(d)(2). IT IS ORDERED that the motion at Docket 33 is GRANTED as set forth above.

At Docket 38, Plaintiff asks for an extension of time to oppose Defendants’ Motion for Partial Summary Judgment, filed at Docket 32. Defendants opposed the extension request at Docket 43, asserting a Rule 56(d) extension is unwarranted. The Court finds good cause to grant the requested extension, particularly since fact discovery does not close until the end of September 2024. Therefore, IT IS ORDERED that Plaintiff’s motion at Docket 38 is GRANTED and Plaintiff’s response deadline to Defendants’ Motion for Partial Summary Judgment is extended to **September 30, 2024**.

DATED this 27th day of August, 2024, at Anchorage, Alaska.

/s/ Sharon L. Gleason
UNITED STATES DISTRICT JUDGE

² Docket 33 at 10.